

PERS 79-5726

11 5 AUG 1979

MEMORANDUM FOR: Director of Personnel

STATINTL FROM

: [REDACTED]
Chief, Staff Personnel Division

SUBJECT : Retroactive Promotions

1. The attached memorandum from the DDO requests retroactive promotions for three computer personnel who, in an effort to be competitive with ODP, are being ranked semi-annually by the DDO (an exception to their once-a-year promotion policy). The semi-annual requirement seems to have caused a problem in scheduling evaluations and it appears that they did not complete this exercise "in time" to make them effective with the other GS-12's.

2. This request bothers me for several reasons, not the least of which is that we know that retroactive promotions generally are not permitted except in settlement of EEO discrimination complaints. The Comptroller General has ruled on this point many times (copies of some decisions attached). In addition, the 1979 Federal Employees Almanac reports a Circuit Court ruling "that an Agency's wrongful failure to promote an employee does not entitle the employee to receive back pay" (copy attached). Despite this knowledge, I realize that I have been liberal in my recommendations for approval of previous requests for retroactive promotions, rationalizing that they were procedural errors; e.g., a rotational assignee "forgotten" by the DDO; a personnel action jurisdictional dispute in ORD; a DDO CT forgotten when catch-up promotions were made for a group of CT's; an OC Panel system failure -- my recommendation for disapproval overruled by D/Pers.

3. Another reason for my concern is that such requests are appearing more frequently and probably can be tied to our uniform promotion system. This system, which I understand has resulted in an increase in the number of promotions, has in effect created a bureaucratic nightmare -- one which requires written justification of an "out-of-cycle" promotion for the approval of the D/Pers; and one which has resulted in efforts to be equitable when actions such as those described in paragraph 2. are surfaced. Not wanting to "penalize" the employee due to the administrative failures of the system or the people involved, we then are forced to take what really is illegal action. We also have hedged our own system somewhat by allowing a promotion action to be effected when it is received in the mail room on Monday following the Friday due date, when the component has provided sufficient oral justification ("15 others made it, thought secretary had hand-carried this one at 4:15 Friday"; "mail room was closed when we got there"; "we delivered it but it didn't get time-stamped"; etc., etc.).

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4. A third reason is the confusion that already has been created among the components. We advise that retroactive promotions are done only in extremely unusual circumstances (EEO, commitment) only to find that we end up approving them. Before the uniform promotion system, promotions could be processed at any time and there were few, if any, routine requests for retroactivity. Under the current system, an out-of-cycle promotion is only a half-solution; the thrust to make the person "whole" and promote retroactively instead follows easily and, if approved, the DCI's mandate to promote uniformly is being followed, everyone has been treated fairly, and, unfortunately, we have taken an illegal action which is vulnerable to challenge.

5. While I realize there is not much to be done about the uniform promotion system, I suggest that we must call a halt to this erosion of conformance with legal requirements, except for those instances where there is clear legal precedence. While it would not be wise to admit in writing that we have been approving retroactive promotions, we should publish at least an OPM to our Personnel Officers, if not a Headquarters Notice, stressing the requirements for submission of actions in time to be processed by the effective date and stating that those received after the effective date will not be processed except as an out-of-cycle promotion. It might be unwise to commit this latter admission to writing, however, in view of the Director's desire for uniform promotion dates. I will be happy to talk to OGC to get a clear understanding and any more current Comptroller General references to support my point (these attached have been verified as still valid by OGC) and of course, would draft the OPM or HN if you agree with that approach.

6. However, because we have been wrestling with this memorandum for several weeks now, a further delay in responding to the DDO until the foregoing actions are accomplished is unwise. I recommend therefore, that the request for retroactive effective dates for these cases be disapproved and that they be processed to be effective 29 July 1979 as allowed by the stamped in date in OP of 19 July 1979.

STATINTL

Attachments

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ROUTING AND RECORD SHEET

STATINTL

SUBJECT: (Optional)

FROM: [REDACTED] OGC/ORMED 7C40, Hqs		EXTENSION	NO. PERS 79-4471/a
			DATE 18 September 1979
TO: (Officer designation, room number, and building)		DATE	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
		RECEIVED FORWARDED	
1. DD/Personnel 5E-58, Hqs SEP 1979			<p>Ben,</p> <p>Retroactive promotions may be made in circumstances where clerical or administrative error resulted in the failure to carry out a nondiscretionary administrative regulation or policy.</p> <p>If a nondiscretionary personnel policy exists which provided that the computer specialist's promotions were to be effective on a specific date (as opposed to a date selected by the promotion panel) retroactive promotions may be granted.</p> <p>DD/Pers: Since the DDO Panel which evaluated GS-09, GS-10 and GS-11 ADP personnel had neither: a) the correct understanding of the established effective date for promotion from GS-11 to GS-12; nor b) the authority to set a different date, it appears that Jim's note above will allow you to sign these actions.</p>
2. C/SPP - DLS call me 9/29			
3. [REDACTED]			
4. [REDACTED]			
5. [REDACTED]			
6. [REDACTED]			
7. DD/Pers			
8. [REDACTED]			
9. [REDACTED]			
10. [REDACTED]			
11. [REDACTED]			
12. [REDACTED]			
13. [REDACTED]			
14. [REDACTED]			
15. [REDACTED]			

FORM 3-62

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